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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,912	01/24/2002	Mustafa Akram	H 3933 PCT/US	7117

423 7590 07/23/2004

HENKEL CORPORATION
THE TRIAD, SUITE 200
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GULPH MILLS, PA 19406

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 07/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,912

Applicant(s)

AKRAM ET AL.

Examiner

Eisa B Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14 and 16-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14 and 16-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1 This action is responsive to the amendment filed on March 30, 2004.

2 The request for Continued Examination (RCE) is improper because RCE is filed before
the prosecution is closed.

3 The cancellation of claim 15 is acknowledged. Pending claims are 14 and 16-32.

4 The rejection of claims 14, 16-23 and 26-32 under 35 U.S.C. 103(a) as being
unpatentable over Hawkins et al. (US 5,843,193) in view of Akram et al. (US 5,494,489), is
maintained for the reasons set forth in the previous office action mailed on 9/30/2003.

5 The rejection of claims 24 and 25 under 35 U.S.C. 103(a) as being unpatentable over
Hawkins et al. (US 5,843,193) in view of Akram et al. (US 5,494,489) and further in view of
Cotteret et al. (US 5,580,357), is maintained for the reasons set forth in the previous office action
mailed on 9/30/2003.

Response to Applicant's Arguments

6 Applicant's arguments filed 3/30/2004 have been fully considered but they are not
persuasive.

With respect to the rejection of the claims based upon Hawkins et al. (US' 193) in view
of Akram et al. (US' 489), Applicant argues that the combination is neither taught nor suggested
by the references, either individually or collectively.

The examiner respectfully disagrees with the above argument because the primary
reference of Hawkins et al. (US' 193) teaches a hair dyeing composition comprising cationic
conditioning agent of quaternary ammonium salts (see col. 9, lines 50-67 and col. 10, lines 1-
14), dye precursors (primary intermediates) (see col. 2, lines 17-67) and anionic tensides (anionic

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surfactants) (see col. 7, line 9). Akram et al. (US' 489) as a secondary reference teaches in analogous art, a composition comprising tris (3-N,N-dimethyl-N-linolenamidopropyl-2-hydroxyammoniumpropyl) phosphonic acid ester-trichloride (Phospholipids EFA) (described in U.S. Pat. No. 4,209,449, which is incorporated herein by reference) (see col. 3, lines 61-64). Therefore, the combination of the references taught and suggested the claimed composition.

With respect to the rejection of the claims based upon Hawkin et al. (US' 193) in view of Akram et al. (US' 489) and further in view of Cotteret et al. (US' 357), The applicant argues that Cotteret et al. does not teach or suggest the combination of the components claimed by Applicants.

The examiner respectfully, disagrees with the above argument and in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

7 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
July 20, 2004

Brian P. Mulk
BRIAN P. MULK
PRIMARY EXAMINER
TECH CENTER 1706